

**REMARKS**

Pending in the present application are claims 1, 4-5, 7, 9-19, 22-26, and 29-34. In response to a Restriction Requirement dated May 29, 2007, claims 6, 8, and 26 were withdrawn. In an Office Action dated March 26, 2008, claims 1, 4-5, 7, 9-19, 22-26, and 29-34 were rejected over the prior art. In reliance on the following remarks all pending claims 1, 4-5, 7, 9-19, 22-26, and 29-34 (including withdrawn claims) are presented for reconsideration and notice of allowance as to all pending claims is requested.

**CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)**

Independent claims 1, 13, 17, 24, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Nasvik et al. 5,232,646 (hereinafter Nasvik '646) in view of combinations of Piazza (4,229,497), and Sherry (5,787,666). Dependant claims 4-5, 7, 9-12, 14-16, 18-19, 22-23, 25, 29, and 31-34 in some cases were rejected over various combinations of Nasvik, Piazza, and Sherry in further view of Keller (4,275,540), Horstketter (6,449,914), and Neumann (4,299,069).

Applicant's invention is a concrete veneer panel (or plurality of panels) that contains fiber reinforced concrete with a thickness between about 1/2 inch to about 3/4 inch. Each veneer panel is mounted separately to a wall and does not support the weight of the wall or the other panels mounted to the wall adjacent it. None of the prior art references teach a veneer panel of fiber reinforced concrete having a thickness of about 1/2 inch to about 3/4 inch.

**A. Applicant's Invention Is Non-Obvious Because The Proposed Modification Of Nasvik '646 Would Render It Unsatisfactory For Its Intended Purpose**

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. M.P.E.P. § 2143.01(V)

Nasvik '646 discloses a method of forming a load bearing wall made of concrete in which the outer surface of the wall can be made to look like stones by utilizing form liners. The resulting wall portion must be structurally capable of supporting the weight of any base wall and the weight of the other wall portions that the wall portion interconnects with. Special means of affixing the wall

portion to the base wall such as hooks or a cage are required because the wall portion bears a load. To withstand structural loading each wall portion **must be structurally reinforced**, with for example metal rods, **and must be between 4 to 5 inches thick at a minimum**. Thus, designing a wall portion to have a thickness of between about  $\frac{1}{2}$  inch to about  $\frac{3}{4}$  inch (and having that wall portion mounted separately from every other wall portion so that each wall portion does not support the interconnecting wall portions) would render the wall portion of Nasvik '646 unsatisfactory, and in fact inoperable, for its intended load bearing structural purpose.

**B. Nasvik '646, Sherry, And Piazza Alone Or In Combination Do Not Teach, Disclose, Or Suggest All The Elements Of The Applicant's Independent Claims**

"All words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03

Applicant's concrete veneer panel as claimed differs from Nasvik '646, Sherry, and Piazza. Independent claims 1, 13, 17, 24, and 30 require Applicant's veneer panel to be between about  $\frac{1}{2}$  inch to about  $\frac{3}{4}$  inch. The panels Sherry discloses are not entirely concrete, and contain internal metal reinforcement along with polymeric or real stone inserts. This reinforcement and material requires the Sherry panel be between 1 to 2 inches thick and weigh 160 pounds for a 2 foot by 4 foot panel, with an average weight of 20 lbs/ft<sup>2</sup>. Both Piazza and Nasvik '646 require panel and wall portion thicknesses in the range of 4 to 5 inches.

Applicant's fiber reinforced panel has an average weight of between 8 to 9 lbs/ft<sup>2</sup>, for an overall 2 foot by 4 foot panel weight of 64 to 72 pounds. Considering Sherry's design and resulting excessive weight, a reduction in thickness to the range claimed by the Applicant results in a substantial reduction in the weight for a concrete veneer panel. This reduction in weight represents a substantial improvement over the prior art as it has made Applicant's concrete veneer panel easier to install and hang.

Because the combination of Nasvik '646, Sherry, and Piazza fails to disclose, teach, or suggest a fiber reinforced concrete veneer panel with a thickness between about  $\frac{1}{2}$  inch to about  $\frac{3}{4}$  inch independent claims 1, 13, 17, 24 and 30 are allowable, and rejection of the claims under 35

U.S.C. § 103(a) is therefore improper. Dependant claims 4-5, 7, 9-12, 14-16, 18-19, 22-23, 25, 29, and 31-34 are also allowable. See M.P.E.P. § 2143.03.

Additionally, Applicant's veneer panel differs geometrically from Nasvik '646, Sherry, and Piazza. In rejecting Applicant's claims, Nasvik '646 was cited as disclosing top and bottom "tab regions." In asserting that elements number 44 and 46 of Nasvik '646 are tab regions, the Examiner has not accounted for the Applicant's use and intended meaning of the word "tab" in the specification and the common meaning of the word "tab". Specifically, the Applicant's specification discloses that the tab regions are projections 66 or slots 68 which fit together to seamlessly interconnect the veneer panels vertically and horizontally. Spec. pg. 12 and 13. As disclosed in Nasvik '646, elements number 44 and 46 are the top and bottom linear surfaces of a wall portion. The bottom surface 46 must be linear to bear the load of the wall portion evenly onto the footings. If these wall portions were vertically stacked (which is not suggested in Nasvik '646) the top and bottom linear surfaces would create distinct repeating horizontal lines along the horizontal length of the assembled wall. Likewise, neither Sherry nor Piazza, nor any other cited reference discloses tab regions.

A contrast should be drawn between elements number 44 and 46 in Nasvik '646 and Applicant's top and bottom tab regions, which are one factor that allows the veneer panels to be offset such that the panels can be arranged seamlessly vertically and horizontally in a non-repeating manner. Applicant's tab regions are therefore significant because they allow for the staggering of veneer panels along a wall such that the visual alignment of each panel's seems are not readably visible to the viewer.

Because independent claims 1, 13, 17, 24 and 30 contain elements not contained in Nasvik '646 in view of Piazza, Keller, Horstketter, Newman or Sherry, these claims are allowable. Dependant claims 4-5, 7, 9-12, 14-16, 18-19, 22-23, 25, 29, and 31-34 are also allowable. See M.P.E.P. § 2143.03.

### **C. Improper Official Notice**

In both the March Office Action and the previous Office Action (dated July 24, 2007) for this Application, it was officially noted by the Examiner that a panel thickness of 1 inch is considered

about three quarters of an inch. The Applicant previously traversed the Examiner's notice in the Applicant's Amendment to the Office Action of July 24, 2007, and has provided factual information regarding the significance of reducing the thickness of a concrete veneer panel (see also above). **However, the Examiner has improperly maintained this notice and made a final rejection utilizing it. See M.P.E.P. § 2144.03.** The use of official notice was improper because whether 1 inch is considered about three quarters of an inch is an assertion made by the Examiner without specific reliance on documentary evidence and cannot be readably and unquestioningly verified. See M.P.E.P. § 2144.03 To properly maintain a rejection the Examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2), M.P.E.P § 2144.03(C) The Examiner has thus far failed to provide any such documentary evidence to rebut the Applicant's showings.

### CONCLUSION

All pending claims are now in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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